IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1815 of 1987

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JASHUBHAI ASHABHAI THAKKER

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1815 of 1987

MR KG VAKHARIA for Petitioner No. 1-5/1,6

MR MK VAKHARIA for Petitioner No. 1,5/1-6

Mr.N.D.Gohil, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 14/09/2004

ORAL JUDGEMENT

1. This petition was originally filed by six petitioners. The petitioner no.5 having expired in the year 1987, during the pendency of the petition, the wife of the petitioner no.5 has been brought on record.

2. In the petition, the petitioners have claimed for several reliefs including the declaration that Rule 2(a) of Deputy Director of Agriculture and District Agricultural Officer Recruitment Rules, 1997 in so far as the same relates to the requirement of holding Bachelors' Degree in Science (Agriculture) for promotion to the next higher post of Gujarat Agricultural Services Class I post be declared as unconstitutional. However, on account of certain developments during the pendency of the petition, the petitioners have confined their challenge in the petition to prayer 9(CC) which reads as follows:

> "Issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondents to grant deemed date of promotion to the petitioners nos.1 to 5 i.e. from 7-3-1981, the day on which Shri D.P.Kalaria, junior to the petitioner has been promoted, and further direct that the petitioners be granted all other consequential benefits pursuant to the deemed promotion."

3. Short factual background leading to the present petition is that all the petitioners who were Graduate in Arts or Commerce were recruited as Junior Statistical Assistant in the year 1961 and 1962. It is the case of the petitioners that the post of Junior Statistical Assistant/Computer was equivalent to the post of Agricultural Supervisor and both the posts were interchangeable. It is further stated in the petition that next higher promotional post is that of Statistical Assistant/Agricultural Officer. As per, the then, existing Recruitment Rules, all the petitioners were eligible for being considered for promotion to the said post of Statistical Assistant/Agricultural Officer. A Government Resolution providing for regulating the recruitment to the posts of Deputy Director of Agriculture and District Agricultural Officer (except in Gandhinagar and Dhangs District) was issued by the State Government on 21st February, 1987. It is the case of the petitioner that it was for the first time, by the said Rules of 21st February,1987, it was provided that for the promotion to the post of Deputy Director of Agriculture or District Agricultural Officer, the officers working as Assistant Director of Agriculture in Gujarat Agricultural Services Class II must possess Bachelors' Degree in

Science (Agriculture) of a recognized University. It is the case of the petitioners that in the year 1987 when the new Recruitment Rules were framed, all the petitioners were working as Assistant Director of Agriculture and had put in more than 15 years of service, but since they did not hold the Bachelors' Degree in Science (Agriculture), they were considered not eligible for promotion to the Gujarat Agricultural Service Class I post. The petitioners had, therefore, challenged the Constitutional validity of the said Rules.

4. It is the case of the petitioners, which is not disputed by the respondents, that during the pendency of the present petition by virtue of the decision of this Court in Special Civil Application no.436 of 1980, the seniority list to the cadre of Assistant Director of Agriculture came to be revised, and therefore, seniority came to be published on 15-4-1995 wherein the entire seniority position from 1965 to 1995 was recast. The petitioners contend that the petitioners nos.1 to 5 are senior to one Shri D.P.Kalaria in the said seniority list. In support of the said averments, the petitioners have also produced the revised seniority list circulated vide circular dated 15-4-1995. The learned Counsel for the petitioner pointed out that the petitioners nos.1 to 5 are shown at serial nos. 443, 444, 456, 457 and 458 respectively in the said seniority list whereas Shri D.P.Kalaria is shown at serial no.460 in the same seniority list. The petitioners further point out that Shri D.P.Kalaria was already promoted to the next higher post of Gujarat Agricultural Services Class I post way back in the year 1981 whereas the petitioners who are senior to the said Shri Kalaria were initially denied such a promotion on the ground that the new Recruitment Rules require that the person should be holding Bachelors' degree in Science (Agriculture) to be eligible to seek promotion. The petitioners have further pointed out that during the pendency of this petition, the petitioners nos.1, 2 and 4 came to be promoted to the next higher post in Class I by order dated 15th January,1996 whereas the petitioner no.3 had retired on 30th October, 1993, the petitioner no.5 had expired in 1987 and the petitioner no.6 was never promoted.

5. On the basis of the above factual position which is not seriously in dispute, the learned Counsel for the petitioner submits that the petitioners had become eligible for being considered for promotion when the junior was so promoted and by virtue of the revised seniority list dated 15-4-1995, the case of the petitioners should have been considered for deemed date

of promotion with effect from 7th March, 1981 when Shri D.P.Kalaria was so promoted. The learned Counsel for the petitioners produced on record a communication dated 6th August, 1998 from the Section Officer of the Government to the petitioner no.3, wherein it is stated that pursuant to the revised seniority list dated 15-4-1995 a Departmental Promotion Committee (DPC) was constituted on 12-5-1995, and the case of the officers who have now become senior by virtue of the revised seniority for promotion to the juniors with effect from 7-3-1981 and for grant of deemed date of promotion, was considered, and the officers who were found eligible for promotion as per the situation prevailing in 1981 were granted promotion by order dated 8-1-1996. However, since he i.e. the petitioner no.3 had retired on 31st October, 1993 and he was not in service on the date of the DPC which met on 12-5-1995, his case was not considered.

6. The respondents have filed an affidavit-in-reply wherein it is stated that the Recruitment Rules were amended in the year 1987 with effect from 21-2-1987 and criteria of educational qualification of B.Sc (Agriculture) was added in the Recruitment Rules. It is stated that pursuant to the judgment dated 4-10-1991 passed in Special Civil Application no.436/1980, the seniority list was revised and published on 15-4-1995. It is further stated that the petitioners become eligible for deemed date of promotion only from 27th March, 1987, and since Recruitment Rules have been amended by then, they are not required to be granted any relief.

7. From the above discussion, it is clear that the petitioners nos.1 to 5 had gained seniority over Shri D.P.Kalaria in the revised seniority list dated 15-4-1995 wherein the seniority was recast pursuant to the decision of this Court in Special Civil Application no.436 of 1980. Admittedly, Shri D.P.Kalaria was promoted to the Class I post on 7-3-1981. It is not the case of the respondents that the petitioners were also considered in 1981, but was found unfit for promotion. In fact, in the communication dated 6th August, 1998, as mentioned above, the respondents have clearly come out with a case that the cases of those officers who had become senior by virtue of the revised seniority list dated 15-4-1995 was considered for deemed date of promotion of 7-3-1981 when persons who have now become their junior were considered and granted such promotion. It is precisely because of this exercise that the petitioners nos.1, 2 and 4 came to be promoted on 15th January, 1996, otherwise there was no occasion to grant such a promotion to the said petitioners since admittedly they were not eligible to be

promoted by virtue of the revised Recruitment Rules framed on 21-2-1987. Thus, it clearly emerges that the Government itself had given effect to the revised seniority list and considered cases of the senior officers for grant of promotion from the date when their juniors were so promoted. There is no explanation as to why such promotions were made prospectively from 15th January, 1996 when the cases of these officers were considered for deemed date of promotion of 7th March, 1981. The above stand of the Government would lead to an anomalous situation where, on one hand the respondents contend that the petitioners are no longer eligible to get promotion after 21st February, 1987 whereas on the other hand the petitioners nos.1, 2 and 4 are granted promotion on 15th January, 1996. Obviously, the said promotions were on account of the exercise carried out by the DPC held on 12th May, 1995 to consider the cases of senior officers who were not earlier promoted when the juniors were so promoted on 7th March, 1981, and that therefore, the embargo of the revised Recruitment Rules requiring B.Sc. with Agriculture as a necessary qualification was not in force since the revised Rules were brought into force only with effect from 21st February, 1987. When the respondents themselves have drawn a review DPC for considering the case of the petitioners nos.1,2 and 4 for grant of deemed date of promotion, it is difficult to understand as to how the petitioners are promoted prospectively with effect from 15th January, 1996 and not granted any further consequential effect of such a consideration in the form of deemed date of promotion and consequential seniority and other benefits. Likewise, I also find that the stand of the respondents to ignore the claims of the petitioner no.3 for being considered for promotion with effect from 7-3-1981 merely on the ground that he had by then retired with effect from 31st October, 1993 is wholly unjustified. The fact of superannuation of the petitioner no.3 cannot come in his way in seeking a deemed date of promotion on the strength of his revised improved seniority as found in seniority list dated 15-4-1995. Similarly, the case of the petitioner no.5 who had though expired in 1987 was required to be considered by creating a deeming fiction and considering whether he was fit for promotion on 7th March, 1981 or not. The case of the petitioner no.6 would, however, stand on a different footing. Admittedly, the petitioner no.6 is not senior to Shri D.P. Kalaria and non consideration of his case for promotion is, therefore, perfectly justified. Since the Recruitment Rules were amended on 21st February, 1987 which amended Recruitment Rules require that for seeking promotion to Class I post,

the candidate must possess degree of B.Sc. (Agricutlure), the petitioner no.6 cannot stake his claim for promotion under the revised Rules also.

8. In view of the foregoing discussion, I find that the case of the petitioners nos.1, 2 and 4 for grant of deemed date of promotion with effect from 7th March, 1981 is required to be accepted. It is accordingly directed that respondents shall grant the deemed date of promotion of 7th March, 1981 to the petitioners nos.1, 2 and 4 to the post of Gujarat Agricultural Services Class I with all consequential benefits.

8.1 The respondents are also directed to consider the case of the petitioners nos.3 and 5 for deemed date of promotion of 7th March, 1981 by drawing a review DPC, and if the DPC on the basis of the service record of the said petitioners find the petitioners fit for promotion as on 7th March, 1981, such promotion shall be given to the petitioners nos.3 and 5 with deemed date of promotion and other consequential benefits.

9. In the result, the petition succeeds and is allowed to the above extent. Rule is made absolute accordingly with no orders as to costs.

(Akil Kureshi,J.)

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